



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1914/P2

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to repeal* 60.23 (24), 66.0419 (title), (1), (2) and (3), 66.0421 (1) (a),
2 66.0421 (1) (b), 66.0422 (1) (a), 100.209, 196.04 (4) (a) 1. and 196.204 (7); *to*
3 *renumber* 196.04 (4) (a) 2. a. to e.; *to renumber and amend* 66.0419 (3m) and
4 943.46 (1) (a); *to consolidate, renumber and amend* 196.04 (4) (a) (intro.)
5 and 2. (intro.); *to amend* 11.01 (17g), 20.395 (3) (jh), 25.40 (1) (a) 4m., 66.0421
6 (title), 66.0421 (2), 66.0421 (3), 66.0421 (4), 66.0422 (title), 66.0422 (2) (intro.),
7 66.0422 (3) (b), 66.0422 (3n), 70.111 (25), 76.80 (3), 77.52 (2) (a) 12., 100.195 (1)
8 (c) 2., 165.25 (4) (ar), 196.01 (1g), 196.01 (9m), 196.04 (4) (b), 196.195 (5),
9 196.203 (1m), 196.203 (3) (b) (intro.), 196.203 (3) (b) 2., 196.203 (3) (c), 196.203
10 (3) (d), 196.203 (3) (e) 1. (intro.), 196.50 (1) (b) 2. e., 196.50 (1) (c), 196.85 (1m)
11 (b), 943.46 (title), 943.46 (2) (a), 943.46 (2) (b), 943.46 (2) (c), 943.46 (2) (d),
12 943.46 (2) (e), 943.46 (2) (f), 943.46 (2) (g) and 943.46 (5); *to repeal and*
13 *recreate* 100.195 (1) (h) 1. and 196.01 (1p); and *to create* 66.0420, 66.0421 (1)
14 (c), 66.0421 (1) (d), 66.0422 (1) (d), 196.01 (12g), 196.01 (12r), 943.46 (1) (d) and

INSERT A

1 943.46 (1) (e) of the statutes; **relating to:** regulation of cable television and
2 video service providers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 11.01 (17g) of the statutes is amended to read:

4 11.01 (17g) "Public access channel" means a PEG channel ~~that is required~~
5 ~~under a franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable~~
6 ~~operator, as defined in s. 66.0419 (2) (b), and, as defined in s. 66.0420 (2) (s), that is~~
7 used for public access purposes, but does not include a PEG channel that is used for
8 governmental or educational purposes.

9 **SECTION 2.** 20.395 (3) (jh) of the statutes is amended to read:

10 20.395 (3) (jh) *Utility facilities within highway rights-of-way, state funds.*
11 From the general fund, all moneys received from telecommunications providers, as
12 defined in s. 196.01 (8p), or cable television telecommunications service providers,
13 as defined in s. 196.01 (1r), for activities related to locating, accommodating,
14 operating, or maintaining utility facilities within highway rights-of-way, for such
15 purposes.

16 **SECTION 3.** 25.40 (1) (a) 4m. of the statutes is amended to read:

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1 25.40 (1) (a) 4m. Moneys received from telecommunications providers or cable
2 television telecommunications service providers that are deposited in the general
3 fund and credited to the appropriation account under s. 20.395 (3) (jh).

4 **SECTION 4.** 60.23 (24) of the statutes is repealed.

5 **SECTION 5.** 66.0419 (title), (1), (2) and (3) of the statutes are repealed.

6 **SECTION 6.** 66.0419 (3m) of the statutes is renumbered 66.0420 (12), and
7 66.0420 (12) (title), (a) and (b) 2., as renumbered, are amended to read:

8 66.0420 (12) (title) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for
9 costs for any of the following, a municipality that owns and operates a cable television
10 system, or an entity owned or operated, in whole or in part, by such a municipality,
11 may not require nonsubscribers of the cable television system to pay any of the costs
12 of the cable television system:

13 1. ~~Public, educational, and governmental access~~ PEG channels.

14 2. Debt service on bonds issued under s. 66.0619 to finance the construction,
15 renovation, or expansion of a cable television system.

16 3. The provision of broadband service by the cable television system, if the
17 requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

18 (b) 2. A majority of the governing board of the municipality votes to submit the
19 question of supporting the operation of a cable television system by the municipality
20 to the electors in an advisory referendum and a majority of the voters in the
21 municipality voting at the advisory referendum vote to support the operation of a
22 cable television system by the municipality.

23 **SECTION 7.** 66.0420 of the statutes is created to read:

24 **66.0420 Video service. (1) LEGISLATIVE FINDINGS.** The legislature finds all
25 of the following:

1 (a) Video service brings important daily benefits to state residents by providing
2 news, education, and entertainment.

3 (b) Uniform regulation of all video service providers by this state is necessary
4 to ensure that state residents receive adequate and efficient video service and to
5 protect and promote the public health, safety, and welfare.

6 (c) Fair competition in the provision of video service will result in new and more
7 video programming choices for consumers in this state, and a number of providers
8 have stated their desire to provide that service.

9 (d) Timely entry into the market is critical for new entrants seeking to compete
10 with existing providers.

11 (e) This state's economy would be enhanced by additional investment in
12 communications and video programming infrastructure by existing and new
13 providers of video service.

14 (f) Minimal regulation of all providers of video service within a uniform
15 framework will promote the investment described in par. (e).

16 (g) Ensuring that existing providers of video service are subject to the same
17 regulatory requirements and procedures as new entrants will ensure fair
18 competition among all providers.

19 (h) This section is an enactment of statewide concern for the purpose of
20 providing uniform regulation of video service that promotes investment in
21 communications and video infrastructures and the continued development of this
22 state's video service marketplace within a framework that is fair and equitable to all
23 providers.

24 (2) DEFINITIONS. In this section:

1 (a) "Affiliate", when used in relation to any person, means another person who
2 owns or controls, is owned or controlled by, or is under common ownership or control
3 with such person.

4 (b) "Basic local exchange service area" means ^{INSERT 5-4} the basic local exchange service
5 area of a telecommunications video service provider that is on file with the public
6 service commission.

7 (c) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b), 2005
8 stats.

9 (d) "Cable operator" has the meaning given in 47 USC 522 (5).

10 (e) "Cable service" has the meaning given in 47 USC 522 (6).

11 (f) "Cable system" has the meaning given in 47 USC 522 (7).

12 (g) "Department" means the department of financial institutions.

13 (h) "FCC" means the federal communications commission.

14 (i) "Franchise fee" has the meaning given in 47 USC 542 (g), and includes any
15 compensation required under s. 66.0425.

16 (j) 1. "Gross receipts" means all revenues received by and paid to a video service
17 provider by subscribers residing within a municipality for video service, including
18 all of the following:

19 a. Recurring charges for video service.

20 b. Event-based charges for video service, including pay-per-view and
21 video-on-demand charges.

22 c. Rental of set top boxes and other video service equipment.

23 d. Service charges related to the provision of video service, including activation,
24 installation, repair, and maintenance charges.

1 e. Administrative charges related to the provision of video service, including
2 service order and service termination charges.

3 2. Notwithstanding subd. 1., "gross receipts" does not include any of the
4 following:

5 a. Discounts, refunds, and other price adjustments that reduce the amount of
6 compensation received by a video service provider.

7 b. Uncollectible fees, except that any uncollectible fees that are written off as
8 bad debt but subsequently collected shall be included as gross receipts in the period
9 collected, less the expenses of collection.

10 c. Late payment charges.

11 d. Maintenance charges.

12 e. Amounts billed to video service subscribers to recover taxes, fees, surcharges
13 or assessments of general applicability or otherwise collected by a video service
14 provider from video service subscribers for pass through to any federal, state, or local
15 government agency, including video service provider fees and regulatory fees paid to
16 the FCC under 47 USC 159.

17 f. Revenue from the sale of capital assets or surplus equipment not used by the
18 purchaser to receive video service from the seller of those assets or surplus
19 equipment.

20 g. Charges, other than those described in subd. 1., that are aggregated or
21 bundled with amounts described in subd. 1. and billed to video service subscribers,
22 including but not limited to any revenues received by a video service provider or its
23 affiliates for telecommunications services, information services, or the provision of
24 directory or Internet advertising, including yellow pages, white pages, banner
25 advertisement, and electronic publishing, if a video service provider can reasonably

1 identify such charges on books and records kept in the regular course of business or
2 by other reasonable means.

3 h. Fees for supporting institutional networks or PEG channels, if any, that are
4 collected from subscribers.

5 i. Reimbursement by programmers of marketing costs actually incurred by a
6 video service provider.

7 (k) "Household" means a house, apartment, mobile home, group of rooms, or
8 single room that is intended for occupancy as separate living quarters. For purposes
9 of this paragraph, "separate living quarters" are those in which the occupants live
10 and eat separately from any other persons in the building and which have direct
11 access from the outside of the building or through a common hall.

12 (L) "Incumbent cable operator" means a person who, immediately before the
13 effective date of this paragraph, was providing cable service under a cable franchise,
14 expired cable franchise, or cable franchise extension, or under an ordinance or
15 resolution adopted or enacted by a municipality.

16 (m) "Institutional network" means a network that connects governmental,
17 educational, and community institutions.

18 (n) "Interim cable operator" means an incumbent cable operator that elects to
19 continue to provide cable service under a cable franchise as specified in sub. (3) (b)
20 2. a.

21 (o) "Issued" means, with respect to a video service franchise, issued or
22 considered to be issued by the department under sub. (3) (f) 2.

23 (p) "Large telecommunications video service provider" means a
24 telecommunications video service provider that has more than 500,000 basic local
25 exchange access lines in this state.

(q) "Low-income household" means any individual or group of individuals living together as one economic unit in a household whose aggregate annual income is not more than \$35,000, as identified by the United States Census Bureau as of January 1, 2007.

(r) "Municipality" means a city, village, or town.

(s) "PEG channel" means a channel designated for noncommercial public, educational, or governmental use.

(r) "Service tier" means a category of video service for which a separate rate is charged.

(u) "State agency" means any board, commission, committee, department, or office in the state government.

(v) "Telecommunications video service provider" means a video service provider that uses facilities for providing telecommunications service, as defined in s. 196.01 (9m), also to provide video service.

(w) "Video franchise area" means the area or areas described in an application for a video service franchise under sub. (3) (d) 2.

(x) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(y) "Video service" means any video programming service, cable service, or service provided via an open video system that complies with 47 USC 573, that is provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or any other technology. "Video service" does not include any of the following:

1. Video programming provided by a commercial mobile radio service provider, as defined in s. 196.01 (2g).

INSERT 8-16

1 2. Video programming provided solely as part of and via a service that enables
2 users to access content, information, electronic mail, or any other service offered over
3 the public Internet.

4 (z) "Video service franchise" means a franchise issued under sub. (3) (f) 2.

5 (zb) "Video service network" means wireline facilities, or any component
6 thereof, located at least in part in the public right-of-way that deliver video service,
7 without regard to delivery technology, including Internet protocol technology or any
8 other technology. "Video service network" includes a cable system.

9 (zg) "Video service provider" means a person, including an incumbent cable
10 operator, who is issued a video service franchise or an affiliate, successor, or assign
11 of such a person.

12 (zm) "Video service provider fee" means the fee paid by a video service provider
13 under sub. (7).

14 **(3) AUTHORITY TO PROVIDE VIDEO SERVICE.** (a) *In general.* Except for an interim
15 cable operator, and except as provided in par. (c), no person may provide video service
16 in this state unless the department has issued a video service franchise to the person
17 and the person has provided the notice required under par. (h).

18 (b) *Incumbent cable operators.* 1. A municipality may not renew or extend the
19 cable franchise of an incumbent cable operator that expires after the effective date
20 of this subdivision [revisor inserts date].

21 2. Before the expiration of a cable franchise specified in subd. 1., an incumbent
22 cable operator may do one of the following:

23 a. Continue to provide cable service as an interim cable operator until the cable
24 franchise expires.

1 b. Apply for a video service franchise. If an incumbent cable operator applies
2 for a video service franchise, the cable franchise shall terminate and have no effect
3 upon issuance of the video service franchise. Upon termination of the cable
4 franchise, the municipality that granted the franchise shall, at the request of the
5 incumbent cable operator, surrender, return, or take such other action as may be
6 necessary to nullify any bond, letter of credit, or similar instrument intended to
7 secure the performance the incumbent cable operator under the cable franchise.

8 3. After the expiration of a cable franchise specified in subd. 1., an incumbent
9 cable operator may not provide cable service in this state unless the the department
10 has issued a video service franchise to the incumbent cable operator and the
11 incumbent cable operator has provided the notice required under par. (h).

12 (c) *Other providers.* If a person, other than an incumbent cable operator, who
13 was authorized immediately before the effective date of this paragraph [revisor
14 inserts date], by a municipality to provide video service applies, no later than the first
15 day of the 2nd month beginning after the effective date of this paragraph [revisor
16 inserts date], for a video franchise, the person may provide video service as
17 authorized by the municipality until the department issues a video franchise to the
18 person.

19 (d) *Application.* An applicant for a video service franchise shall submit an
20 application to the department that consists of all of the following:

21 1. The location and telephone number of the applicant's principal place of
22 business, the names of the principal executive officers of the applicant, and the
23 names of any persons authorized to represent the applicant before the department.

24 2. A description of the area or areas of the state in which the applicant intends
25 to provide video service.

1 3. The date on which the applicant intends to begin providing video service in
2 the video franchise area.

3 4. An affidavit signed by an officer or general partner of the applicant that
4 affirms all of the following:

5 a. That the applicant has filed or will timely file with the FCC all forms required
6 by the FCC in advance of offering video service.

7 b. That the applicant agrees to comply with this section and all applicable
8 federal statutes and regulations.

9 c. That the applicant is legally, financially, and technically qualified to provide
10 video service.

11 (e) *Service upon municipalities.* 1. At the time that an applicant submits an
12 application under par. (d) to the department, the applicant shall serve a copy of the
13 application on each municipality in the video franchise area.

14 2. If a municipality specified in subd. 1. has granted any cable franchise that
15 is in effect immediately before the effective date of this subdivision [revisor inserts
16 date], the municipality shall, no later than 10 business days after receipt of the copy,
17 notify the applicant in writing of the number of PEG channels for which incumbent
18 cable operators are required to provide channel capacity in the municipality and the
19 percentage of revenues that incumbent cable operators are required to pay the
20 municipality as franchise fees.

21 (f) *Department duties.* 1. No later than 10 business days after the filing of an
22 application, the department shall notify the applicant in writing as to whether the
23 application is complete and, if the department has determined that the application
24 is not complete, the department shall state the reasons for the determination.

1 2. No later than 10 business days after the filing of an application that the
2 department has determined is complete, the department shall issue a video service
3 franchise to the applicant and, if the department fails to do so, the department shall
4 be considered to have issued a video service franchise to the applicant, unless the
5 applicant withdraws the application or agrees with the department to an extension
6 of time.

7 (g) *Effect of video service franchise.* A video service franchise issued by the
8 department authorizes a video service provider to construct, operate, maintain, and
9 repair a video service network to provide video service in the video franchise area.

10 (h) *Notice before providing service.* No later than 10 days before providing video
11 service in a municipality in a video franchise area, a video service provider shall
12 provide notice to the department and the municipality.

13 (i) *Expiration of video service franchise.* A video service franchise issued to a
14 video service provider does not expire, unless the video service provider gives 30 days'
15 advance notice to the department that the video service provider intends to
16 terminate the video service franchise. If a video service provider gives such notice,
17 the video service franchise shall expire on the termination date stated in the notice.

18 (j) *Modifications.* If there is any change in the information included in an
19 application filed by a video service provider under this subsection, the video service
20 provider shall notify the department and update the information within 10 business
21 after the change.

22 (4) FRANCHISING AUTHORITY. For purposes of 47 USC 521 to 573, the state is the
23 exclusive franchising authority for video service providers in this state. No
24 municipality may require a video service provider to obtain a franchise to provide
25 video service or impose any fee or requirement on a video service provider, including

on a video service provider.

1 any requirement to deploy facilities or equipment or any requirement regarding
2 rates for video service, except as specifically authorized under this section.

3 (5) PEG CHANNELS. (a) *Maximum number of PEG channels.* 1. If an incumbent
4 cable operator is providing channel capacity for PEG channels to a municipality
5 under a cable franchise in effect immediately before the effective date of this
6 subdivision [revisor inserts date], the municipality shall require each interim
7 cable operator or video service provider that provides video service in the
8 municipality to provide channel capacity for the same number of PEG channels for
9 which channel capacity is provided immediately before the effective date of this
10 subdivision [revisor inserts date].

11 2. a. Except as provided in subd. 2. b. and c., if no incumbent cable operator is
12 providing channel capacity for PEG channels to a municipality under a cable
13 franchise that is in effect immediately before the effective date of this subd. 2. a.
14 [revisor inserts date], then, if the municipality has a population of 50,000 or more,
15 the municipality may require each interim cable operator and video service provider
16 that provides video service in the municipality to provide channel capacity for up to
17 3 PEG channels, and, if the municipality has a population of less than 50,000, the
18 municipality may require each interim cable operator and video service provider that
19 provides video service in the municipality to provide channel capacity for no more
20 than 2 PEG channels.

21 b. If an interim cable operator or video service provider distributes video
22 programming to more than one municipality through a single headend or video hub
23 office and the aggregate population of the municipalities is 50,000 or more, the
24 municipalities may not require the interim cable operator or video service provider

1 to provide, in the aggregate, channel capacity for more than 3 PEG channels under
2 subd. 2. a.

3 c. If an interim cable operator or video service provider distributes video
4 programming to more than one municipality through a single headend or video hub
5 office and the aggregate population of the municipalities is less than 50,000, the
6 municipalities may not require the interim cable operator or video service provider
7 to provide, in the aggregate, channel capacity for more than 2 PEG channels under
8 subd. 2. a.

9 3. An interim cable operator or video service provider shall provide any channel
10 capacity for PEG channels required under this paragraph on any service tier that is
11 viewed by more than 50 percent of the interim cable operator's or video service
12 provider's customers.

13 4. A video service provider's duty to provide any additional channel capacity
14 for PEG channels that is required by a municipality under this paragraph first
15 applies on the date that the video service provider begins to provide service in the
16 municipality or, if the municipality is required to provide notice under sub. (3) (e) 2.,
17 on the date that the video service provider begins to provide video service in the
18 municipality or on the 90th day after the video service provider receives the
19 municipality's notice, whichever is later.

20 (b) *Exceptions.* 1. a. Notwithstanding par. (a), an interim cable operator or
21 video service provider may reprogram for any other purpose any channel capacity
22 provided for a PEG channel required by a municipality under par. (a) if the PEG
23 channel is not substantially utilized by the municipality. If the municipality certifies
24 to the interim cable operator or video service provider that reprogrammed channel
25 capacity for a PEG channel will be substantially utilized by the municipality, the

1 interim cable operator or video service provider shall, no later than 120 days after
2 receipt of the certification, restore the channel capacity for the PEG channel.
3 Notwithstanding par. (a) 3., an interim cable operator or video service provider may
4 provide restored channel capacity for a PEG channel on any service tier.

5 b. For purposes of this subdivision, a PEG channel is substantially utilized by
6 a municipality if the municipality provides 12 hours or more of programming on the
7 PEG channel each calendar day and at least 80 percent of that programming is
8 locally produced and not repeated.

9 2. Notwithstanding par. (a), if a municipality fails to provide the notice
10 specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no interim
11 cable operator or video service provider is required to provide channel capacity for
12 any PEG channel until the 90th day after the municipality provides such notice.

13 (c) *Powers and duties of municipalities.* 1. Except as otherwise required under
14 par. (a), a municipality may not require an interim cable operator or video service
15 provider to provide any funds, services, programming, facilities, or equipment
16 related to public, educational, or governmental use of channel capacity.

17 2. The operation of any PEG channel for which a municipality requires an
18 interim cable operator or video service provider to provide channel capacity under
19 par. (a), and the production of any programming appearing on such a PEG channel,
20 shall be the sole responsibility of the municipality and, except as provided in par. (d)
21 1., the interim cable operator or video service provider shall bear only the
22 responsibility to transmit programming appearing on the PEG channel.

23 3. A municipality that requires an interim cable operator or video service
24 provider to provide channel capacity for a PEG channel under par. (a) shall do all of
25 the following:

1 a. Ensure that all content and programming that the municipality provides or
2 arranges to provide for transmission on the PEG channel is submitted to the interim
3 cable operator or video service provider in a manner and form that is capable of being
4 accepted and transmitted by the interim cable operator or video service provider over
5 its video service network without changing the content or transmission signal and
6 that is compatible with the technology or protocol, including Internet protocol
7 television, utilized by the interim cable operator or video service provider to deliver
8 video service.

9 b. Make the content and programming that the municipality provides or
10 arranges to provide for transmission on a PEG channel available in a
11 nondiscriminatory manner to all interim cable operators and video service providers
12 that provide video service in the municipality.

13 (d) *Duties of interim cable providers and video service provider.* 1. If a
14 municipality requires an interim cable operator or video service provider to provide
15 channel capacity for a PEG channel under par. (a), the interim cable operator or video
16 service provider shall be required to provide only the first 200 feet of transmission
17 line that is necessary to connect to the interim cable operator's or video service
18 provider's video service network one distribution point used by the municipality to
19 transmit programming for the PEG channel.

20 2. If the interconnection of the video service networks of interim cable operators
21 or video service providers is technically necessary and feasible for the transmission
22 of programming for any PEG channel for which channel capacity is required by a
23 municipality under par. (a), the interim cable operators and video service providers
24 shall negotiate in good faith for interconnection on mutually acceptable rates, terms,
25 and conditions, except that an interim cable operator or video service provider who

1 requests interconnection is responsible for interconnection costs, including the cost
2 of transmitting programming from its origination point to the interconnection point.
3 Interconnection may be accomplished by direct cable microwave link, satellite, or
4 any other reasonable method.

5 (6) INSTITUTIONAL NETWORKS. No state agency or municipality may require an
6 interim cable operator or video service provider to provide any institutional network
7 or equivalent capacity on its video service network.

8 (7) VIDEO SERVICE PROVIDER FEE. (a) *Duty to pay fee.* 1. Notwithstanding s.
9 66.0611 and except as provided in subd. 2., a video service provider shall, on a
10 quarterly calendar basis, calculate and pay to each municipality in which the video
11 service provider provides video service a video service provider fee equal to the
12 percentage of the video service provider's gross receipts that is specified in par. (b).
13 A video service provider shall remit the fee to the municipality no later than 45 days
14 after the end of each quarter. Except as provided in subd. 2., the duty to remit the
15 fee first applies to the quarter in which the video service provider begins to provide
16 service in the municipality or, if the municipality is required to provide notice under
17 sub. (3) (e) 2., to the quarter in which the video service provider begins to provide
18 service in the municipality or to the quarter that includes the 45th day after the video
19 service provider receives the municipality's notice, whichever quarter is later.

20 2. If a municipality fails to provide the notice specified in sub. (3) (e) 2. before
21 the deadline specified in sub. (3) (e) 2., no video service provider is required to pay
22 a video service fee, and no interim cable operator is required to pay a franchise fee,
23 to the municipality until the 45th day after the end of the quarter in which the
24 municipality provides the notice specified in sub. (3) (e) 2.

provider

1 (b) *Amount of fee.* The percentage applied to a video service provider's gross
2 receipts under par. (a) 1. for each municipality shall be 5 percent or one of the
3 following percentages, whichever is less:

4 1. If no incumbent cable operator was required to pay a franchise fee equal to
5 a percentage of gross revenues to the municipality immediately before the effective
6 date of this subdivision [revisor inserts date], the municipality may specify a
7 percentage of no more than 5 percent. The duty of a video service provider to pay the
8 municipality a video service fee equal to such percentage shall first apply on the 90th
9 day after the municipality provides notice of the percentage to the video service
10 provider.

11 2. If an incumbent cable operator was required to pay a franchise fee equal to
12 a percentage of gross revenues to the municipality immediately before the effective
13 date of this subdivision [revisor inserts date], that percentage.

14 3. If more than one incumbent cable operator was required to pay a franchise
15 fee equal to a percentage of gross revenues to the municipality immediately before
16 the effective date of this subdivision [revisor inserts date], the lowest such
17 percentage.

18 (c) *Generally accepted accounting principles.* All determinations and
19 computations made under this subsection shall be made pursuant to generally
20 accepted accounting principles.

21 (d) *Record review.* A municipality may, upon reasonable written request but
22 no more than once in any 3-year period, for the purpose of ensuring proper and
23 accurate payment of a video service provider fee, review the business records of a
24 video service provider that is required to pay the municipality a video service
25 provider fee.

1 (e) *Actions to enforce payment.* 1. A municipality or a video service provider
2 may not bring an action concerning the amount of a video service provider fee
3 allegedly due to the municipality unless the parties have first participated in and
4 completed good faith settlement discussions. For purposes of any future litigation,
5 all negotiations pursuant to this paragraph shall be treated as compromise
6 negotiations under s. 904.08.

7 2. An action regarding a dispute over the amount of a video service provider fee
8 paid or allegedly due under this subsection shall be commenced within 3 years
9 following the end of the calendar quarter to which the disputed amount relates or be
10 barred, unless the parties agree in writing to an extension of time. Notwithstanding
11 ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in the action to
12 either party.

13 (f) *Itemization.* A video service provider may identify and collect the amount
14 related to a video service provider fee as a separate line item on customer bills.

15 (g) *Invalidity of other fees.* If a video service provider pays video service
16 provider fees to a municipality as required under this subsection, the municipality
17 may not require the video service provider to pay any compensation under s. 66.0425,
18 or any permit fee, encroachment fee, degradation fee, or any other fee, for the
19 occupation of or work within public rights-of-way.

20 (8) DISCRIMINATION; ACCESS TO SERVICES. (a) *Discrimination prohibited.* 1. No
21 video service provider may deny access to video service to any group of potential
22 residential customers in the video service provider's video franchise area because of
23 the race or income of the residents in the local area in which the group resides.

24 2. It is a defense to an alleged violation of subd. 1. based on income if the video
25 service provider has met either of the following conditions:

1 a. No later than 3 years after the date on which the video service provider began
2 providing video service under this section, at least 25 percent of households with
3 access to the video service provider's video service are low-income households.

4 b. No later than 5 years after the date on which the video service provider began
5 providing video service under this section, at least 30 percent of the households with
6 access to the video service provider's video service are low-income households.

7 (b) *Access.* 1. A large telecommunications video service provider shall provide
8 access to its video service to the following percentages of households within the large
9 telecommunications video service provider's basic local exchange service area:

10 a. Not less than 25 percent no later than 3 years after the date on which the
11 large telecommunications video service provider began providing video service
12 under this section.

13 b. Not less than 50 percent no later than 6 years after the date on which the
14 large telecommunications video service provider began providing video service
15 under this section, or no later than 2 years after at least 30 percent of households
16 with access to the large telecommunications video service provider's video service
17 subscribe to the service for 6 consecutive months, whichever occurs later.

18 2. A large telecommunications video service provider shall file an annual report
19 with the department regarding the large telecommunications video service
20 provider's progress in complying with subd. 1.

21 (c) *Extensions and waivers.* A video service provider may apply to the
22 department for an extension of any time limit specified in par. (a) 2. or (b) or a waiver
23 of a requirement to comply with par. (b). The department shall grant the extension
24 or waiver if the video service provider demonstrates to the satisfaction of the
25 department that the video service provider has made substantial and continuous

1 efforts to comply with the requirements of this subsection and that extension or
2 waiver is necessary due to one or more of the following factors:

3 1. The video service provider's inability to obtain access to public and private
4 rights-of-way under reasonable terms and conditions.

5 2. Developments and buildings that are not subject to competition because of
6 exclusive service arrangements.

7 3. Developments and buildings that are not accessible using reasonable
8 technical solutions under commercially reasonable terms and conditions.

9 4. Natural disasters.

10 5. Other factors beyond the control of the video service provider.

11 (d) *Alternative technologies.* A video service provider may satisfy the
12 requirements of this subsection through the use of an alternative technology, other
13 than satellite service, that does all of the following:

14 1. Offers service, functionality, and content demonstrably similar to the
15 service, functionality, and content provided through the video service provider's
16 video service network.

17 2. Provides access to PEG channels and messages broadcast over the
18 emergency alert system.

19 (e) *Limitations.* Notwithstanding any other provision of this section, a
20 telecommunications video service provider is not required to provide video service
21 outside the provider's basic local exchange service area, and a video service provider
22 that is an incumbent cable operator is not required to provide video service outside
23 the area in which the incumbent cable operator provided cable service at the time the
24 department issued a video service franchise to the incumbent cable operator.

1 **(9) CUSTOMER SERVICE STANDARDS.** (a) Except as provided in par. (b), upon 90
2 days' advance notice, a municipality may require a video service provider to comply
3 with the customer service standards specified in 47 CFR 76.309 (c) in its provision
4 of video service. Neither the department nor any municipality shall have the
5 authority to impose additional or different customer service standards that are
6 specific to the provision of video service.

7 (b) No video service provider that provides video service in a municipality may
8 be subject to any customer service standards if there is at least one other person
9 offering cable or video service in the municipality or if the video service provider is
10 subject to effective competition, as determined under 47 CFR 76.905, in the
11 municipality. *(INSERT 22-11)* *that provides cable or*
video service
in a

12 **(10) LIMITATION ON RATE REGULATION.** The department or a municipality may not
13 regulate the rates charged for any cable or video service by an interim cable operator *municipali*
14 or video service provider *if* at least one other interim cable operator or video service
15 provider is providing cable or video service in the municipality and the other interim
16 cable operator or video service provider is not an affiliate of the interim cable
17 operator or video service provider. This subsection applies regardless of whether any
18 affected interim cable operator or video service provider has sought a determination
19 from the FCC regarding effective competition under 47 CFR 76.905.

20 **(11) TRANSFER OF VIDEO SERVICE FRANCHISE.** A person who is issued a video
21 service franchise may transfer the video service franchise to any
22 successor-in-interest, including a successor-in-interest that arises through
23 merger, sale, assignment, restructuring, change of control, or any other transaction.
24 No later than 10 days after the transfer is completed, the person originally issued the
25 video service franchise shall provide notice of the transfer to the department and to

1 any municipality in which the person has provided video service. Neither the
2 department nor any municipality shall have any authority to review or approve the
3 transfer.

4 (13) RULE-MAKING; ENFORCEMENT. (a) Notwithstanding s. 227.11, the
5 department may not promulgate rules interpreting or establishing procedures for
6 this section.

7 (b) Except as provided in sub. (7) (e), a municipality, interim cable operator, or
8 video service provider that is affected by a failure to comply with this section may
9 bring an action to enforce this section. If a court finds that a municipality, interim
10 cable operator, or video service provider has not complied with this section, the court
11 shall order the municipality, interim cable operator, or video service provider to
12 comply with this section. Notwithstanding ss. 814.01, 814.02, 814.03, and 814.035,
13 no costs may be allowed in an action under this paragraph to any party.

14 (c) Any violation of this section may be enforced by an action on behalf of the
15 state by the department of justice.

16 **SECTION 8.** 66.0421 (title) of the statutes is amended to read:

17 **66.0421 (title) Access to cable video service.**

18 **SECTION 9.** 66.0421 (1) (a) of the statutes is repealed.

19 **SECTION 10.** 66.0421 (1) (b) of the statutes is repealed.

20 **SECTION 11.** 66.0421 (1) (c) of the statutes is created to read:

21 66.0421 (1) (c) "Video service" has the meaning given in s. 66.0420 (2) (y).

22 **SECTION 12.** 66.0421 (1) (d) of the statutes is created to read:

23 66.0421 (1) (d) "Video service provider" has the meaning given in s. 66.0420 (2)
24 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

25 **SECTION 13.** 66.0421 (2) of the statutes is amended to read:

1 66.0421 (2) INTERFERENCE PROHIBITED. The owner or manager of a multiunit
2 dwelling under common ownership, control or management or of a mobile home park
3 or the association or board of directors of a condominium may not prevent a cable
4 ~~operator~~ video service provider from providing cable video service to a subscriber who
5 is a resident of the multiunit dwelling, mobile home park or of the condominium or
6 interfere with a ~~cable operator~~ video service provider providing cable video service
7 to a subscriber who is a resident of the multiunit dwelling, mobile home park or of
8 the condominium.

9 **SECTION 14.** 66.0421 (3) of the statutes is amended to read:

10 66.0421 (3) INSTALLATION IN MULTIUNIT BUILDING. Before installation, a ~~cable~~
11 ~~operator~~ video service provider shall consult with the owner or manager of a
12 multiunit dwelling or with the association or board of directors of a condominium to
13 establish the points of attachment to the building and the methods of wiring. A cable
14 ~~operator~~ video service provider shall install facilities to provide cable video service
15 in a safe and orderly manner and in a manner designed to minimize adverse effects
16 to the aesthetics of the multiunit dwelling or condominium. Facilities installed to
17 provide cable video service may not impair public safety, damage fire protection
18 systems or impair fire-resistive construction or components of a multiunit dwelling
19 or condominium.

20 **SECTION 15.** 66.0421 (4) of the statutes is amended to read:

21 66.0421 (4) REPAIR RESPONSIBILITY. A ~~cable operator~~ video service provider is
22 responsible for any repairs to a building required because of the construction,
23 installation, disconnection or servicing of facilities to provide cable video service.

24 **SECTION 16.** 66.0422 (title) of the statutes is amended to read:

1 **66.0422 (title) ~~Cable television~~ Video service, telecommunications, and**
2 **broadband facilities.**

3 **SECTION 17.** 66.0422 (1) (a) of the statutes is repealed.

4 **SECTION 18.** 66.0422 (1) (d) of the statutes is created to read:

5 66.0422 (1) (d) "Video service" has the meaning given in s. 66.0420 (2) (y).

6 **SECTION 19.** 66.0422 (2) (intro.) of the statutes is amended to read:

7 66.0422 (2) (intro.) Except as provided in subs. (3), (3d), (3m), and (3n), no local
8 government may enact an ordinance or adopt a resolution authorizing the local
9 government to construct, own, or operate any facility for providing cable video
10 service, telecommunications service, or broadband service, directly or indirectly, to
11 the public, unless all of the following are satisfied:

12 **SECTION 20.** 66.0422 (3) (b) of the statutes is amended to read:

13 66.0422 (3) (b) A majority of the governing board of the local government votes
14 to submit the question of supporting the operation of the facility for providing cable
15 video service, telecommunications service, or Internet access service, directly or
16 indirectly to the public, by the local government to the electors in an advisory
17 referendum and a majority of the voters in the local government voting at the
18 advisory referendum vote to support operation of such a facility by the local
19 government.

20 **SECTION 21.** 66.0422 (3n) of the statutes is amended to read:

21 66.0422 (3n) Subsection (2) does not apply to a local government that, on March
22 1, 2004, was providing cable video service to the public.

23 **SECTION 22.** 70.111 (25) of the statutes is amended to read:

1 70.111 (25) DIGITAL BROADCASTING EQUIPMENT. Digital broadcasting equipment
2 owned and used by a radio station, television station, or ~~cable television system~~ video
3 service network, as defined in s. 66.0419 (2) (d) 66.0420 (2) (zb).

4 **SECTION 23.** 76.80 (3) of the statutes is amended to read:

5 76.80 (3) "Telecommunications services" means the transmission of voice,
6 video, facsimile or data messages, including telegraph messages, except that
7 "telecommunications services" does not include ~~cable television~~ video service, as
8 defined in s. 66.0420 (2) (y), radio, one-way radio paging or transmitting messages
9 incidental to transient occupancy in hotels, as defined in s. 254.61 (3).

10 **SECTION 24.** 77.52 (2) (a) 12. of the statutes is amended to read:

11 77.52 (2) (a) 12. The sale of cable television system services, or video services,
12 as defined in s. 66.0420 (2) (y), including installation charges.

13 **SECTION 25.** 100.195 (1) (c) 2. of the statutes is amended to read:

14 100.195 (1) (c) 2. Telecommunications services or ~~cable television~~ services.

15 **SECTION 26.** 100.195 (1) (h) 1. of the statutes, as created by 2005 Wisconsin Act
16 458, is repealed and recreated to read:

17 100.195 (1) (h) 1. Video service, as defined in s. 66.0420 (2) (y).

18 **SECTION 27.** 100.209 of the statutes is repealed.

19 **SECTION 28.** 165.25 (4) (ar) of the statutes, as affected by 2005 Wisconsin Act
20 458, is amended to read:

21 165.25 (4) (ar) The department of justice shall furnish all legal services
22 required by the department of agriculture, trade and consumer protection relating
23 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
24 100.182, 100.20, 100.205, 100.207, ~~100.209~~, 100.21, 100.28, 100.37, 100.42, 100.50,

1 100.51, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with any
2 other services as are necessarily connected to the legal services.

3 **SECTION 29.** 196.01 (1g) of the statutes is amended to read:

4 196.01 (1g) "Basic local exchange service" means the provision to residential
5 customers of an access facility, whether by wire, cable, fiber optics or radio, and
6 essential usage within a local calling area for the transmission of high-quality
7 2-way interactive switched voice or data communication. "Basic local exchange
8 service" includes extended community calling and extended area service. "Basic
9 local exchange service" does not include additional access facilities or any
10 discretionary or optional services that may be provided to a residential customer.
11 "Basic local exchange service" does not include cable television service or services
12 provided by a commercial mobile radio service provider.

13 **SECTION 30.** 196.01 (1p) of the statutes is repealed and recreated to read:

14 196.01 (1p) "Cable service" has the meaning given in 47 USC 522 (6).

15 **SECTION 31.** 196.01 (9m) of the statutes is amended to read:

16 196.01 (9m) "Telecommunications service" means the offering for sale of the
17 conveyance of voice, data or other information at any frequency over any part of the
18 electromagnetic spectrum, including the sale of service for collection, storage,
19 forwarding, switching and delivery incidental to such communication and including
20 the regulated sale of customer premises equipment. "Telecommunications service"
21 does not include cable television service or broadcast service.

22 **SECTION 32.** 196.01 (12g) of the statutes is created to read:

23 196.01 (12g) "Video service" has the meaning given in s. 66.0420 (2) (y).

24 **SECTION 33.** 196.01 (12r) of the statutes is created to read:

1 196.01 (12r) "Video service provider" has the meaning given in s. 66.0420 (2)
2 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

3 **SECTION 34.** 196.04 (4) (a) (intro.) and 2. (intro.) of the statutes are
4 consolidated, renumbered 196.04 (4) (a) (intro.) and amended to read:

5 196.04 (4) (a) (intro.) In this subsection: ~~2. "Sewerage, "sewerage system~~
6 operator" means any of the following:

7 **SECTION 35.** 196.04 (4) (a) 1. of the statutes is repealed.

8 **SECTION 36.** 196.04 (4) (a) 2. a. to e. of the statutes are renumbered 196.04 (4)
9 (a) 1. to 5.

10 **SECTION 37.** 196.04 (4) (b) of the statutes is amended to read:

11 196.04 (4) (b) If the parties cannot agree and the commission finds that public
12 convenience and necessity or the rendition of reasonably adequate service to the
13 public requires that a public utility, telecommunications provider, sewerage system
14 operator, or cable operator video service provider be permitted to extend its lines on,
15 over or under the right-of-way of any railroad, or requires that the tracks of any
16 railroad be extended on, over or under the right-of-way of any public utility,
17 telecommunications provider, sewerage system operator, or cable operator video
18 service provider, the commission may order the extension by the public utility,
19 telecommunications provider, sewerage system operator, cable operator video
20 service provider, or railroad on, over or under the right-of-way of the other if it will
21 not materially impair the ability of the railroad, telecommunications provider,
22 sewerage system operator, cable operator video service provider, or public utility, on,
23 over or under whose right-of-way the extension would be made, to serve the public.
24 The commission shall prescribe lawful conditions and compensation which the
25 commission deems equitable and reasonable in light of all the circumstances.

1 **SECTION 38.** 196.195 (5) of the statutes is amended to read:

2 196.195 (5) COMMISSION ACTION. If after the proceedings under subs. (2), (3) and
3 (4) the commission has determined that effective competition exists in the market
4 for the telecommunications service which justifies a lesser degree of regulation and
5 that lesser regulation in that market will serve the public interest, the commission
6 may, by order, suspend any of the following provisions of law, except as provided
7 under subs. (7) and (8): ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s. 196.07; s.
8 196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s.
9 196.194; s. 196.196 (1) or (5); s. 196.20; ~~s. 196.204 (7)~~; s. 196.21; s. 196.22; s. 196.26;
10 s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s. 196.77; s.
11 196.78; s. 196.79; and s. 196.805.

12 **SECTION 39.** 196.203 (1m) of the statutes is amended to read:

13 196.203 (1m) Any person claiming to be a cable television telecommunications
14 service provider under this section shall annually file with the commission any
15 information required by the commission to determine the gross income of the person
16 which is derived from the operation of a cable television system.

17 **SECTION 40.** 196.203 (3) (b) (intro.) of the statutes is amended to read:

18 196.203 (3) (b) (intro.) The commission may not deny a petition filed under par.
19 (a) by a provider of cable ~~television~~ service for alternative telecommunications utility
20 status in a particular geographical area as not being in the public interest if basic
21 local exchange service is provided in the same geographical area by any of the
22 following:

23 **SECTION 41.** 196.203 (3) (b) 2. of the statutes is amended to read:

24 196.203 (3) (b) 2. Subject to par. (c), a telecommunications utility with 50,000
25 or less access lines in use in this state which also provides cable ~~television~~ service in

1 that geographical area, if provision of cable television service began after September
2 1, 1994.

3 **SECTION 42.** 196.203 (3) (c) of the statutes is amended to read:

4 196.203 (3) (c) Paragraph (b) 2. shall not apply if the telecommunications
5 utility's provision of cable television service is limited to the provision of satellite
6 cable programming, as defined in s. 943.47 (1) (b).

7 **SECTION 43.** 196.203 (3) (d) of the statutes is amended to read:

8 196.203 (3) (d) Section 196.50 (1) (b) applies to an alternative
9 telecommunications utility except for a provider of cable television service.

10 **SECTION 44.** 196.203 (3) (e) 1. (intro.) of the statutes is amended to read:

11 196.203 (3) (e) 1. (intro.) If a provider of cable television service files a petition
12 under par. (a) for alternative telecommunications status to offer local exchange
13 service, as defined in s. 196.50 (1) (b) 1., in a geographical area served by a
14 telecommunications utility with less than 50,000 access lines in use in this state on
15 September 1, 1994, or at any time thereafter, the commission may not deny the
16 petition as not being in the public interest and shall do any of the following:

17 **SECTION 45.** 196.204 (7) of the statutes is repealed.

18 **SECTION 46.** 196.50 (1) (b) 2. e. of the statutes is amended to read:

19 196.50 (1) (b) 2. e. The holder of the permit and the applicant are both providers
20 of cable television video service, if the holder's provision of cable television video
21 service began after September 1, 1994. This subd. 2. e. does not apply if the holder's
22 provision of cable television video service is limited to the provision of satellite cable
23 programming, as defined in s. 943.47 (1) (b).

24 **SECTION 47.** 196.50 (1) (c) of the statutes is amended to read:

1 196.50 (1) (c) Any provision in an agreement or municipal franchise that
2 prohibits entry into the telecommunications or cable television services market after
3 September 1, 1994, is void. ~~Paragraph (b) and this paragraph do not invalidate an~~
4 ~~ordinance enacted under s. 66.0419 which requires a provider of cable television~~
5 ~~services to obtain a franchise before offering those services.~~

6 **SECTION 48.** 196.85 (1m) (b) of the statutes is amended to read:

7 196.85 (1m) (b) For the purpose of direct assessment under sub. (1) of expenses
8 incurred by the commission in connection with its activities under s. 196.04 (4), the
9 term "public utility" includes a ~~cable operator, as defined in s. 66.0419 (2) (b)~~ video
10 service provider.

11 **SECTION 49.** 943.46 (title) of the statutes is amended to read:

12 **943.46 (title) Theft of ~~cable television~~ video service.**

13 **SECTION 50.** 943.46 (1) (a) of the statutes is renumbered 943.46 (1) (c) and
14 amended to read:

15 943.46 (1) (c) "~~Cable television~~ Video service" has the meaning given in s.
16 ~~196.01 (1p).~~ "~~Cable television~~ 66.0420 (2) (y), except that "video service" does not
17 include signals received by privately owned antennas that are not connected to a
18 ~~cable television system~~ video service network whether or not the same signals are
19 provided by a ~~cable television company~~ video service provider.

20 **SECTION 51.** 943.46 (1) (d) of the statutes is created to read:

21 943.46 (1) (d) "Video service network" has the meaning given in s. 66.0420 (2)
22 (zb).

23 **SECTION 52.** 943.46 (1) (e) of the statutes is created to read:

24 943.46 (1) (e) "Video service provider" has the meaning given in s. 66.0420 (2)
25 (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

1 **SECTION 53.** 943.46 (2) (a) of the statutes is amended to read:

2 943.46 (2) (a) Obtain or attempt to obtain cable television video service from
3 a ~~company~~ provider by trick, artifice, deception, use of an illegal device or illegal
4 decoder or other fraudulent means with the intent to deprive that ~~company~~ provider
5 of any or all lawful compensation for rendering each type of service obtained. The
6 intent required for a violation of this paragraph may be inferred from the presence
7 on the property and in the actual possession of the defendant of a device not
8 authorized by the ~~cable television company~~ video service provider, the major purpose
9 of which is to permit reception of ~~cable television~~ video services without payment.
10 This inference is rebutted if the defendant demonstrates that he or she purchased
11 that device for a legitimate use.

12 **SECTION 54.** 943.46 (2) (b) of the statutes is amended to read:

13 943.46 (2) (b) Give technical assistance or instruction to any person in
14 obtaining or attempting to obtain any ~~cable television~~ video service without payment
15 of all lawful compensation to the ~~company~~ provider providing that service. This
16 paragraph does not apply if the defendant demonstrates that the technical
17 assistance or instruction was given or the installation of the connection, descrambler
18 or receiving device was for a legitimate use.

19 **SECTION 55.** 943.46 (2) (c) of the statutes is amended to read:

20 943.46 (2) (c) Make or maintain a connection, whether physical, electrical,
21 mechanical, acoustical or by other means, with any cables, wires, components or
22 other devices used for the distribution of ~~cable television~~ video services for the
23 purpose of distributing ~~cable television~~ video service to any other dwelling unit
24 without authority from a ~~cable television company~~ video service provider.

25 **SECTION 56.** 943.46 (2) (d) of the statutes is amended to read:

1 943.46 (2) (d) Make or maintain a connection, whether physical, electrical,
2 mechanical, acoustical or by other means, with any cables, wires, components or
3 other devices used for the distribution of ~~cable-television~~ video services for the
4 purpose of obtaining ~~cable-television~~ video service without payment of all lawful
5 compensation to the ~~company~~ provider providing that service. The intent required
6 for a violation of this paragraph may be inferred from proof that the ~~cable~~ video
7 service to the defendant's residence or business was connected under a service
8 agreement with the defendant and has been disconnected by the ~~cable-television~~
9 ~~company~~ video service provider and that thereafter there exists in fact a connection
10 to the ~~cable-system~~ video service network at the defendant's residence or business.

11 **SECTION 57.** 943.46 (2) (e) of the statutes is amended to read:

12 943.46 (2) (e) Make or maintain any modification or alteration to any device
13 installed with the authorization of a ~~cable-television-company~~ video service provider
14 for the purpose of intercepting or receiving any program or other service carried by
15 that ~~company~~ provider which that person is not authorized by that ~~company~~ provider
16 to receive. The intent required for a violation of this paragraph may be inferred from
17 proof that, as a matter of standard procedure, the ~~cable-television-company~~ video
18 service provider places written warning labels on its converters or decoders
19 explaining that tampering with the device is a violation of law and the converter or
20 decoder is found to have been tampered with, altered or modified so as to allow the
21 reception or interception of programming carried by the ~~cable-television-company~~
22 video service provider without authority to do so. The trier of fact may also infer that
23 a converter or decoder has been altered or modified from proof that the ~~cable~~
24 ~~television-company~~ video service provider, as a matter of standard procedure, seals
25 the converters or decoders with a label or mechanical device, that the seal was shown

1 to the customer upon delivery of the decoder and that the seal has been removed or
2 broken. The inferences under this paragraph are rebutted if the ~~cable television~~
3 ~~company~~ video service provider cannot demonstrate that the intact seal was shown
4 to the customer.

5 **SECTION 58.** 943.46 (2) (f) of the statutes is amended to read:

6 943.46 (2) (f) Possess without authority any device or printed circuit board
7 designed to receive from a ~~cable television system~~ video service network any ~~cable~~
8 ~~television~~ video programming or services offered for sale over that ~~cable television~~
9 ~~system~~ video service network, whether or not the programming or services are
10 encoded, filtered, scrambled or otherwise made unintelligible, or perform or
11 facilitate the performance of any of the acts under pars. (a) to (e) with the intent that
12 that device or printed circuit be used to receive that ~~cable television company's~~ video
13 service provider's services without payment. Intent to violate this paragraph for
14 direct or indirect commercial advantage or private financial gain may be inferred
15 from proof of the existence on the property and in the actual possession of the
16 defendant of a device if the totality of circumstances, including quantities or
17 volumes, indicates possession for resale.

18 **SECTION 59.** 943.46 (2) (g) of the statutes is amended to read:

19 943.46 (2) (g) Manufacture, import into this state, distribute, publish,
20 advertise, sell, lease or offer for sale or lease any device, printed circuit board or any
21 plan or kit for a device or for a printed circuit designed to receive the ~~cable television~~
22 video programming or services offered for sale over a ~~cable television system~~ video
23 network system from a ~~cable television system~~ video network system, whether or not
24 the programming or services are encoded, filtered, scrambled or otherwise made
25 unintelligible, with the intent that that device, printed circuit, plan or kit be used for

1 the reception of that ~~company's~~ provider's services without payment. The intent
2 required for a violation of this paragraph may be inferred from proof that the
3 defendant has sold, leased or offered for sale or lease any device, printed circuit
4 board, plan or kit for a device or for a printed circuit board in violation of this
5 paragraph and during the course of the transaction for sale or lease the defendant
6 expressly states or implies to the buyer that the product will enable the buyer to
7 obtain ~~cable television~~ video service without charge.

8 **SECTION 60.** 943.46 (5) of the statutes is amended to read:

9 943.46 (5) EXCEPTION. This section does not affect the use by a person of ~~cable~~
10 ~~television~~ video services if the services have been paid for and the use is exclusive to
11 the person's dwelling unit. This subsection does not prohibit a board or council of any
12 city, village or town from specifying the number and manner of installation of outlets
13 used by any such person for ~~cable television~~ video services and does not prohibit a
14 ~~cable television company~~ video service provider, in any written contract with a
15 subscriber, from requiring the ~~company's~~ provider's approval for any increase in the
16 number of those outlets used.

17 **SECTION 61. Effective dates.** This act takes effect on the day after publication,
18 except as follows:

19 (1) The treatment of sections 100.195 (1) (c) 2. and (h) 1. and 165.25 (4) (ar) of
20 the statutes takes effect on April 1, 2007.

21 (END)

or on the day after
publication, whichever
is later

1

INSERT A:

Current federal law generally prohibits a person from providing cable service without a cable franchise. Under current federal and state law, cable service is defined, in part, as the one-way transmission of "video programming," which is defined as programming provided by, or generally considered comparable to, programming provided by a television broadcast station. Current federal law allows either states or municipalities to grant cable franchises to persons who provide cable service, which are referred to as "cable operators". Under current state law, municipalities (i.e., cities, villages, and towns) grant or revoke franchises. In addition, current state law allows a municipality to require a cable operator to pay a franchise fee to the municipality that is based on the operator's income or gross revenues.

This bill repeals state law authorizing municipalities to grant cable franchises to cable operators. Instead, the bill requires a person who provides "video service" to obtain a video service franchise from the Department of Financial Institutions (DFI). The bill defines "video service" as any video programming service, cable service, or service provided by certain "open video systems", without regard to delivery technology, but only if the service is provided through facilities that are located, at least in part, in public rights-of-way. (An "open video system" is system regulated under federal law that combines features of cable television and telecommunications systems.) The bill's definitions of "video programming" and "cable service" are comparable to the definitions under current law described above. As a result, video service includes both the one-way and two-way transmission of video programming. However, the following types of video programming are excluded from the definition of "video service": 1) video programming provided by wireless telephone companies; and 2) video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, and other services offered over the public Internet.

Under the bill, if a person has not been issued a cable franchise under current law, the person may not provide video service unless DFI issues a video service franchise to the person. The bill allows a cable operator who has been issued a cable franchise under current law to provide cable service under the cable franchise until the cable franchise expires, or apply to DFI for a video service franchise. The bill refers to a cable operator who elects to provide cable service until the expiration of a cable franchise as an "interim cable operator". Upon the expiration of a cable franchise, an interim cable operator must apply to DFI for a video service franchise in order to continue to provide cable service. If a cable operator elects to apply for a video service franchise before the expiration of its cable franchise, the bill provides that the cable franchise terminates upon DFI's issuance of a video service franchise.

Application process. The bill requires an applicant for a video service franchise to submit an application to DFI that consists of certain business information about the applicant and an affidavit affirming that the applicant will comply with federal filing requirements, as well as state and federal laws regarding

video service. In addition, the applicant must describe the areas of the state in which the applicant intends to provide video service, which the bill defines as the "video franchise area", as well as the dates on which the applicant intends to begin providing service in such areas.

At the time an applicant submits an application, the applicant must serve a copy of the application on each municipality in the video franchise area. If such a municipality has granted a cable franchise to a cable operator under current law, the municipality must, not later than 10 days business days after receipt of the copy, notify the applicant of the following: 1) the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law; and 2) the number of "PEG channels" for which cable operators are required by the municipality to provide channel capacity. The bill defines "PEG" channel as a channel designated for noncommercial public, educational, or governmental use.

No later than 10 business days after receipt of an application, DFI must notify the applicant as to whether the application is complete. No later than 10 business days after receipt of an application that DFI determines is complete, DFI must issue a video service franchise to the applicant. If DFI fails to meet this deadline, the bill provides that DFI is considered to have issued a video service franchise to the applicant, unless the applicant withdraws the application or agrees with DFI for an extension of time. The bill refers to a person to whom DFI issues, or is considered to have issued, a video service franchise as a "video service provider".

Video service franchises. A video service franchise under the bill authorizes a video service provider to construct, operate, maintain, and repair a video service network in the video franchise area. A video service franchise does not expire, unless a video service provider gives 30 days' advance notice to DFI that the video service provider intends to terminate the video service franchise. A video service provider may transfer a video service franchise to any successor-in-interest, including a successor-in-interest that arises through merger, sale, assignment, restructuring, change of control, or any other transaction. A video service provider must notify DFI and affected municipalities about the transfer, but the bill prohibits DFI and municipalities from reviewing or approving the transfer.

Video service franchise fees. The bill requires a video service provider to pay a fee on a quarterly calendar basis to each municipality in which the video service provider provides video service. The bill refers to the fee as a "video service franchise fee". The amount of the video service franchise fee is based on a percentage of the video service service provider's "gross receipts", which is defined in the bill. If no cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to 5% of the video service provider's gross receipts, or a lesser percentage specified by the municipality. If only one cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to that percentage or 5%, whichever is less. If more than one cable operator was required under current law to pay a

franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to the lowest such percentage or 5%, whichever is less. ^{ten} ^{percent}

As noted above, no later than 10 ^{ten} day business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law. If a municipality is not required to make such a notification, the video service provider's duty to pay a video service franchise fee first applies to the quarter in which the video service provider begins to provide video service in the municipality. If the municipality is required to make such a notification, and makes the notification before the deadline, the video service provider's duty first applies to the quarter in which the video service provider begins to provide video service, or the quarter that includes the 45th day after the video service provider receives the notification, whichever is later. If the municipality fails to comply with the deadline, a video service provider is not required to pay a video service provider fee until the 45th day after the end of the quarter in which the municipality ultimately provides the notification, and no other video service provider or interim cable operator is required to pay a video service provider fee or franchise fee until the same date.

^{three} The bill allows municipalities to review the business records of a video service provider no more than once in any 3-year period for the purpose of ensuring proper and accurate payment of a video service provider fee. The bill prohibits a video service provider or municipality from bringing an action in court regarding the amount of a video service provider fee until the parties have completed good faith settlement negotiations. In addition, an action regarding a dispute over such an amount must be commenced within 3 years following the calendar quarter to which the disputed amount relates, or is barred, unless the parties agree to an extension of time. ^{three}

PEG channels. The bill imposes limitations on the number of PEG channels for which a municipality may require a video service provider to provide channel capacity. If, immediately before the effective date of the bill, a municipality required a cable operator to provide channel capacity for a specified number of PEG channels, the municipality must require all video service providers and interim cable operators to provide channel capacity for that specified number of PEG channels. If a municipality did not require a cable operator to provide such channel capacity, then the number of PEG channels for which a municipality may require channel capacity depends on the population of the municipality. If the municipality's population is 50,000 or more, the municipality may require each video service provider and interim cable operator to provide channel capacity for up to 3 PEG channels. If the municipality's population is less than 50,000, the municipality may require each video service provider and interim cable operator to provide channel capacity for up to 2 PEG channels. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video

hub office, the bill requires the populations of the municipalities to be aggregated for the purpose of applying the foregoing requirements.

The bill includes requirements for determining when the duty of a video service provider to provide channel capacity for PEG channels first applies. As noted above, no later than ^{ten} 10 day business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the number of PEG channels for which cable operators are required provide channel capacity. In general, the duty of a video service operator begins on the date on which the video service provider begins to provide video service in the municipality, or on the 90th day after the video service provider receives the municipality's notice, whichever is later. However, if a municipality fails to comply with 10-business-day deadline, no video service provider or interim cable operator is required to provide channel capacity for PEG channels until the 90th day after the municipality ultimately provides the notice.

The bill also allows video service providers and interim cable operators to reprogram channel capacity for PEG channels that is not substantially utilized, as determined under the bill, by a municipality. Under certain circumstances, the bill allows a municipality to require the restoration of channel capacity for PEG channels.

The bill creates other requirements for PEG channels, including the following:

- 1) the bill prohibits municipalities from requiring video service providers and interim cable operators from providing funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity;
- 2) the bill imposes specified duties on municipalities regarding the content and programming provided for PEG channels;
- 3) the bill imposes limits on the amount of transmission line that a video service provider or interim cable operator may be required to provide for making a connection to the municipality's PEG channel programming distribution point; and
- 4) the bill imposes requirements on video service providers and interim cable operators regarding interconnection that is necessary for transmitting PEG channel programming.

Discrimination and access. In general, the bill prohibits a video service provider from denying access to video service to any group of potential residential customers in a video franchise area because of the race or income of the residents in the local area in which the group resides. The bill creates a defense against an alleged violation of the prohibition regarding income for a video service provider if either of the following are satisfied: 1) no later than ^{three} 3 years after the video service provider begins to provide video service, at least 25% of households with access to the video service provider's video service are low-income households; or 2) no later than ^{five} 5 years after the video service provider begins to provide video service, at least 30% of households with access to the video service provider's video service are low-income households. The bill defines "low-income household" as a household whose aggregate income is not more than \$35,000, as identified by the United States Census Bureau as of January 1, 2007. Under certain circumstances, the bill allows DFI to grant a video service provider an extension of the time limits specified in the defense.

The bill also imposes access requirements on certain video service providers that use telecommunications facilities to provide video service. The access requirements apply if a video service provider has more than 500,000 basic local exchange access lines in the state. No later than ^{three} 3 years after such a video service provider begins to provide video service, the video service provider must provide access to its video service to not less than 25% of the households within the video service provider's basic local exchange area that is on file with the Public Service Commission (PSC). In addition, no later than ^{three} 3 years after such a video service provider begins to provide video service, or no later than ^{two} 2 years after at least 30% of households with access to such a video service provider's video service subscribe to the service for ^{six} 6 consecutive months, whichever occurs later, the video service provider must provide access to its video service to not less than 50% of the households within the video service provider's basic local exchange area that is on file with the PSC. Such a video service provider must file annual reports with DFI regarding progress in complying with the access requirements. Under certain circumstances, the bill allows DFI to grant such a video service provider an extension of the foregoing time limits or a waiver from the need to comply with the foregoing requirements. ^{percent}

Customer service standards. Except as noted below, the bill allows a municipality, upon 90 days' advance notice, to require a video service provider to comply with certain customer service standards set forth in regulations promulgated by the Federal Communications Commission (FCC). The bill prohibits DFI and municipalities from imposing any additional or different customer service standards. In addition, the bill provides that, except for customer service standards promulgated by rule by the Department of Agriculture, Trade, and Consumer Protection (DATCP), a video service provider in a municipality may not be subject to any customer services if at least one other person offers video or cable service in the municipality, or if the video service provider is subject to effective competition, as determined under FCC regulations. If one of the foregoing conditions is satisfied, a municipality may not impose the FCC customer service standards mentioned above. ^{Service Standards}

Rate regulation. The bill prohibits DFI and municipalities from regulating video or cable service rates of video service providers or interim cable operators that provide service in a municipality if at least one other unaffiliated video service provider or interim cable operator serves the municipality.

Municipal authority. The bill provides that, for purposes of federal law, the state is the exclusive franchising authority for video service providers in this state. In addition, the bill prohibits municipalities from requiring a video service provider to obtain a franchise to provide video service or imposing on video service providers any fee or requirement relating to the construction of a video service network or the provision of video service, except as otherwise authorized under the bill. Also, the bill provides that, if a video service provider pays video service provider fees to a municipality as required under the bill, the municipality may not require the video service provider to pay any compensation allowed under current law for obstructions

or excavations, or pay any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way.

Rule making and enforcement. The bill prohibits DFI from promulgating any rules interpreting the bill's provisions, or establishing procedures for the bill's requirements. The bill allows a municipality, video service provider, or interim cable operator that is affected by a failure to comply with the bill to bring an action in court to enforce the bill. (Court actions regarding disputes over video service provider fees are also subject to the requirements discussed above.) In addition, the bill allows the Department of Justice to bring an action to enforce the bill.

Other provisions. The bill also does all of the following:

1. The bill allows certain persons to provide video service before they are issued a video service franchise. The persons who are allowed to do so are persons, other than cable operators, who are authorized by municipalities to provide video service and who apply to DFI for a video service franchise no later than approximately one month after the bill's effective date.

2. The bill requires a video service provider to give at least ^{ten} 10 days advance notice to a municipality before providing video service in the municipality.

3. The bill requires a video service provider to notify DFI about any changes in the information included in an application for a video service franchise, including any expansions of a video franchise area.

4. The bill prohibits state agencies and municipalities from requiring video service providers and interim cable operators to provide institutional networks or equivalent capacity. The bill defines "institutional network" as a network that connects governmental, educational, and community institutions.

5. The bill repeals requirements enforced by DATCP and district attorneys regarding cable television subscriber rights regarding service interruptions and disconnections, repairs, program service deletions, and rate increases.

6. The bill repeals a prohibition under current law on the provision of electronically published news, feature and entertainment material, and electronic advertising service by certain telecommunications utilities.

7. The bill changes other requirements under current law that apply or refer to cable television or cable operators so that they also apply or refer to video service or video service providers. Such requirements include the following: 1) requirements applicable to access to cable service in multiunit dwellings, mobile home parks, and condominiums; 2) requirements applicable to a municipality's construction, ownership, or operation of facilities for providing cable service, telecommunications service, or broadband service; 3) ~~certain tax exemptions~~; 4) certain requirements enforced by the PSC regarding extensions by utilities and cable operators over the rights-of-way of other utilities and cable operators; and 5) theft of cable service.

INSERT 5-4:

INSERT B

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1914/1ins2
MDK:.....

- 1 **INSERT B:**
2 exemptions related to the telephone company tax and the personal property tax; 4)
3 the sales and use tax on the sale of cable television system services;

1 the area on file with the public service commission in which a telecommunications
2 video service provider provides basic local exchange service, as defined in s. 196.01
3 (1g).

4 **INSERT 8-16:**

5 , as modified, if applicable, in a notification made under sub. (3) (j).

6 **INSERT 11-12:**

7 *a video service provider submits*
8 , or a notification regarding a modification to an application under par. (j),

9 **INSERT 11-13:**

10 *only*
11 2. a. This subdivision applies to a municipality that, under subd. 1., is served
12 a copy of an application, or a copy of a notification relating to an expansion of the area
13 or areas of the state in which a video service provider intends to provide video service.

14 **INSERT 12-21:**

15 , except that if the video service provider determines to expand the area or areas of
16 the state in which the video service provider intends to provide video service, the
17 video service provider shall notify the department as soon as practicable after
18 making such a determination

19 **INSERT 12-25:**

20 relating to the construction of a video service network or the provision of video
21 service,

22 **INSERT 22-11:**

This paragraph does not apply to any customer service standards promulgated by
rule by the department of agriculture, trade and consumer protection.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1914/lins3
MDK:.....

is served
a copy of
an application or
that,
under
subd. 1,

INSERT 11-13:

2. a. This subdivision applies only to a municipality that, under subd. 1., is
served a copy of a notification relating to ^{an} ~~the~~ expansion of the area or areas of the
state in which a video service provider intends to provide video service, ^e ~~but only~~ if
the ~~video service provider~~ ^{been} has not previously served a copy of an application under
subd. 1. on the municipality; or is served a copy of an application

municipality

^e by the video service provider.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1914/1dn
MDK:.....

Rep. Montgomery:

✓✓ The purpose of this drafter's note is to describe the differences between this version and the previous version. **However, please note the questions that I raise in items 3, 11, 15, 19, 24, and 25.** Also, note that I discussed the issue of municipal authority with our local government drafting attorney (Marc Shovers), and he thinks proposed s. 66.0420 (4) and (7) (g) are sufficient to prevent municipalities from imposing fees on, or otherwise regulating, video service providers, except as provided under the bill. ✓✓✓✓

Legislative findings

1. I added language to proposed s. 66.0420 (1) to help rebut an argument that the bill unconstitutionally impairs contracts (i.e., municipally granted franchises). Based on my review of the case law on impairment of contracts, it appears that a court is more likely to uphold legislation if a legitimate state policy is clearly articulated in the legislation. Therefore, I added language to articulate the policy reasons for the bill.

Definitions

2. The following definitions are changed: "incumbent cable operator", "low-income household", "PEG channel", "video service", and "video service network". Also, the reference to PEG broadcasting is deleted from the definition of "gross receipts". ✓ to provide

3. The definition of "institutional network" is changed. Note, however, that I did not use the definition provided because that definition has logical problems. Proposed s. 66.0420 (6) prohibits state agencies and municipalities from requiring interim cable operators and video service providers from providing institutional networks. Therefore, it doesn't make sense to define "institutional network" as something that is provided by a cable operator. ***Is my definition okay?***

4. The definition of "video franchise area" is changed, as well as a reference to such area in proposed s. 66.0420 (3) (d) 2.

5. Although we didn't discuss it at our meeting on February 20, based on discussions with John Stolzenberg of the Legislative Council, I made changes to the definitions of "service tier" and "video service franchise".

6. I eliminated definitions from proposed s. 66.0420 (8) (b), and created definitions for "basic local exchange service area", "large telecommunications video service provider". ✓✓

and "telecommunications video service provider" in proposed s. 66.0420 (2). I revised the duties in proposed s. 66.0420 (8) (b) so that they apply to "large telecommunications video service providers". Also note that the reference to the bill's effective date is eliminated from the definition of "basic local exchange service area".

Authority to provide video service

- ✓ 7. Proposed s. 66.0420 (3) (c) is a new paragraph that creates an exception for certain persons to provide video service before they are issued a video service franchise.
- ✓ 8. I revised s. 66.0420 (3) (e) and (j) (as well as the definition of "video franchise area") to account for expansions to the video franchise area. video
- ✓ 9. In proposed s. 66.0420 (3) (e) 2. b., the deadline is changed from 30 business days to 10 business days.

Franchising authority

- ✓ 10. I changed proposed s. 66.0420 (4) to specify the types of requirements and fees that municipalities may not impose on video service providers.
- 11. At the meeting on February 20, I mistakenly stated that the proposal's sub. (6) (i) is not included in the bill. I now realize that proposed s. 66.0420 (4) prohibits a municipality from requiring a video service provider to deploy facilities or equipment. ***Does proposed s. 66.0420 (4) address your concerns on deployment and build-outs?*** (I didn't mention build-outs in proposed s. 66.0420 (4) because I think the reference to "deployment" covers this issue.)

PEG channels

- 12. Instead of saying that video service providers and interim cable operators "provide PEG channels", the bill is revised to say that such entities "provide channel capacity for PEG channels". See proposed s. 66.0420 (3) (e) 2. b. and (5) (a), (b), (c) 3., and (d).
- 13. The interconnection language in proposed s. 66.0420 (5) (d) 2. is changed as requested.
- 14. The interconnection requirements under proposed s. 66.0420 (5) (d) 2. are changed.
- 15. I revised proposed s. 66.0420 (5) (a) 4. to refer to the initial applicability of the duty to provide "any additional channel capacity for PEG channels that are required by municipalities" under the bill. I think the revision ensures the initial applicability does not apply to channel capacity for PEG channels that is currently being provided by incumbent cable operators. ***Is that okay?***
- 16. The "first 200 feet" rule is revised in proposed s. 66.0420 (5) (d) 1.

Video service provider fee

- 17. The statute of limitations in proposed s. 66.0420 (7) (e) 2. is revised to refer to the calendar quarter to which a dispute relates, rather than to the completion of negotiations.

Discrimination; access

18. Under proposed s. 66.0420 (8) (c), DFI can grant a waiver for complying with the access requirements under proposed s. 66.0420 (8) (b), but cannot waive the prohibition against discrimination based on race or income under proposed s. 66.0420 (8) (a). (The previous version allowed DFI to waive the income discrimination prohibition.) However, note that, as under the previous version, this version allows DFI to extend the deadlines in the income discrimination defense.

19. Proposed s. 66.0420 (8) (e) is intended to correspond to the proposal's sub. (6) (h). However, what if a video service provider, when applying for a video service franchise, included an area in the video service franchise area that is outside the areas specified in proposed s. 66.0420 (8) (e)? As drafted, it would appear that the video service provider may not be required to provide video service in those areas, even though the video service provider itself included the areas in the video service franchise area. ***Is that okay?***

Customer service standards

20. I added the last sentence to proposed s. 66.0420 (9) (b), which creates an exception for DATCP rules.

Limitation on rate regulation

21. Proposed s. 66.0420 (10) is revised to apply to DFI. I also added the ^{second} 2nd sentence.

Cross references

22. ***In general:*** Except as noted below, I revised other statutes so that they refer to "video service providers" and "video service networks", rather than to "cable operators" or "cable television systems". In addition, for purposes of the other statutes, I defined "video service providers" to mean both "interim cable operators" and "video service providers" as defined in the bill.

23. ***Retail sales tax:*** Because s. 77.52 (2) (a) 12. ^{depends upon} has a unique definition of "cable television system", I did not affect that definition. (The definition is set forth at s. 77.52 (2) (am).) Instead, I revised s. 77.52 (2) (a) 12. to also refer to "video service".

24. ***Unfair billing (s. 100.195):*** I think that there is a mistake in current law, in that s. 100.195 (1) (c) 2. should refer to "television service", rather than "cable television service". My reason is that "television service" is defined in s. 100.195 (1) (h), but is not otherwise used in s. 100.195. Therefore, I fixed the mistake in s. 100.195 (1) (c) 2. ***Is that okay?*** Also, as requested, I defined "television service" to include video service as defined in the bill.

25. ***Privacy (s. 134.43):*** I have not received further instructions on how you want to treat s. 134.43. Therefore, I did not make any changes. ***Do you wish to make changes to s. 134.43?***

26. ***Chapter 196:*** I am uncertain as to how you want to deal with ch. 196. I changed the term "cable television service" to "cable service" as defined under federal law. See

my repeal and recreation of s. 196.01 (1p) and related changes in ss. 196.01 (1g) and (9m) and 196.203 (3) (b) (intro.) ^{and} 2., (c), (d), and (e) 1. (intro.).

27. **Connection of facilities (s. 196.04 (4)):** I replaced "cable operator" with "video service provider" which is defined in s. 196.01 (12r) to mean both "interim cable operators" and "video service providers" as defined in the bill. 5

two 28. **Cable television telecommunications service providers (s. 196.203):** I did not affect the definition of "cable television telecommunications service provider" in s. 196.01 (1r), which is used in s. 196.01 (1d) (a). In addition, the following statutes mistakenly refer to a "cable telecommunications service provider" and I corrected them to refer instead to a "cable television telecommunications service provider": ss. 20.395 (3) (jh), 25.40 (1) (a) 4m., and 196.203 (1m). In addition, I did not affect the use of the term "cable television system" in ss. 196.01 (1r) and 196.203 (1m) (which are the only 2 uses of that term in ch. 196). However, as noted above, I changed references in s. 196.203 from "cable television service" to "cable service".

29. **Competing public utilities, etc. (s. 196.50):** In s. 196.50 (1) (b) 2. e., I replaced "cable television service" with "video service" which is defined in s. 196.01 (12g) to have the meaning as defined in the bill.

30. **Assessments (s. 196.85):** In s. 196.85 (1m) (b), I replaced "cable operator" with "video service provider" which is defined in s. 196.01 (12r) to mean both "interim cable operators" and "video service providers" as defined in the bill.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1914/1dn
MDK:cjs:pg

February 28, 2007

Rep. Montgomery:

The purpose of this drafter's note is to describe the differences between this version and the previous version. ***However, please note the questions that I raise in items 3, 11, 15, 19, 24, and 25.*** Also, note that I discussed the issue of municipal authority with our local government drafting attorney (Marc Shovers), and he thinks proposed s. 66.0420 (4) and (7) (g) are sufficient to prevent municipalities from imposing fees on, or otherwise regulating, video service providers, except as provided under the bill.

Legislative findings

1. I added language to proposed s. 66.0420 (1) to help rebut an argument that the bill unconstitutionally impairs contracts (i.e., municipally granted franchises). Based on my review of the case law on impairment of contracts, it appears that a court is more likely to uphold legislation if a legitimate state policy is clearly articulated in the legislation. Therefore, I added language to articulate the policy reasons for the bill.

Definitions

2. The following definitions are changed: "incumbent cable operator," "low-income household," "PEG channel," "video service," and "video service network." Also, the reference to PEG broadcasting is deleted from the definition of "gross receipts."

3. The definition of "institutional network" is changed. Note, however, that I did not use the definition provided because that definition has logical problems. Proposed s. 66.0420 (6) prohibits state agencies and municipalities from requiring interim cable operators and video service providers to provide institutional networks. Therefore, it doesn't make sense to define "institutional network" as something that is provided by a cable operator. ***Is my definition okay?***

4. The definition of "video franchise area" is changed, as well as a reference to such area in proposed s. 66.0420 (3) (d) 2.

5. Although we didn't discuss it at our meeting on February 20, based on discussions with John Stolzenberg of the Legislative Council, I made changes to the definitions of "service tier" and "video service franchise."

6. I eliminated definitions from proposed s. 66.0420 (8) (b), and created definitions for "basic local exchange service area," "large telecommunications video service provider,"

and “telecommunications video service provider” in proposed s. 66.0420 (2). I revised the duties in proposed s. 66.0420 (8) (b) so that they apply to “large telecommunications video service providers.” Also note that the reference to the bill’s effective date is eliminated from the definition of “basic local exchange service area.”

Authority to provide video service

7. Proposed s. 66.0420 (3) (c) is a new paragraph that creates an exception for certain persons to provide video service before they are issued a video service franchise.

8. I revised s. 66.0420 (3) (e) and (j) (as well as the definition of “video franchise area”) to account for expansions to the video franchise area.

9. In proposed s. 66.0420 (3) (e) 2. b., the deadline is changed from 30 business days to 10 business days.

Franchising authority

10. I changed proposed s. 66.0420 (4) to specify the types of requirements and fees that municipalities may not impose on video service providers.

11. At the meeting on February 20, I mistakenly stated that the proposal’s sub. (6) (i) is not included in the bill. I now realize that proposed s. 66.0420 (4) prohibits a municipality from requiring a video service provider to deploy facilities or equipment.

Does proposed s. 66.0420 (4) address your concerns on deployment and build-outs? (I didn’t mention build-outs in proposed s. 66.0420 (4) because I think the reference to “deployment” covers this issue.)

PEG channels

12. Instead of saying that video service providers and interim cable operators “provide PEG channels,” the bill is revised to say that such entities “provide channel capacity for PEG channels.” See proposed s. 66.0420 (3) (e) 2. b. and (5) (a), (b), (c) 3., and (d).

13. The interconnection language in proposed s. 66.0420 (5) (d) 2. is changed as requested.

14. The interconnection requirements under proposed s. 66.0420 (5) (d) 2. are changed.

15. I revised proposed s. 66.0420 (5) (a) 4. to refer to the initial applicability of the duty to provide “any additional channel capacity for PEG channels that are required by municipalities” under the bill. I think the revision ensures the initial applicability does not apply to channel capacity for PEG channels that is currently being provided by incumbent cable operators. ***Is that okay?***

16. The “first 200 feet” rule is revised in proposed s. 66.0420 (5) (d) 1.

Video service provider fee

17. The statute of limitations in proposed s. 66.0420 (7) (e) 2. is revised to refer to the calendar quarter to which a dispute relates, rather than to the completion of negotiations.

Discrimination; access

18. Under proposed s. 66.0420 (8) (c), DFI can grant a waiver for complying with the access requirements under proposed s. 66.0420 (8) (b), but cannot waive the prohibition against discrimination based on race or income under proposed s. 66.0420 (8) (a). (The previous version allowed DFI to waive the income discrimination prohibition.) However, note that, as under the previous version, this version allows DFI to extend the deadlines in the income discrimination defense.

19. Proposed s. 66.0420 (8) (e) is intended to correspond to the proposal's sub. (6) (h). However, what if a video service provider, when applying for a video service franchise, included an area in the video service franchise area that is outside the areas specified in proposed s. 66.0420 (8) (e)? As drafted, it would appear that the video service provider may not be required to provide video service in those areas, even though the video service provider itself included the areas in the video service franchise area. ***Is that okay?***

Customer service standards

20. I added the last sentence to proposed s. 66.0420 (9) (b), which creates an exception for DATCP rules.

Limitation on rate regulation

21. Proposed s. 66.0420 (10) is revised to apply to DFI. I also added the second sentence.

Cross references

22. ***In general:*** Except as noted below, I revised other statutes so that they refer to "video service providers" and "video service networks," rather than to "cable operators" or "cable television systems." In addition, for purposes of the other statutes, I defined "video service providers" to mean both "interim cable operators" and "video service providers" as defined in the bill.

23. ***Retail sales tax:*** Because s. 77.52 (2) (a) 12. depends upon a unique definition of "cable television system," I did not affect that definition. (The definition is set forth at s. 77.52 (2) (am).) Instead, I revised s. 77.52 (2) (a) 12. to also refer to "video service."

24. ***Unfair billing (s. 100.195):*** I think that there is a mistake in current law, in that s. 100.195 (1) (c) 2. should refer to "television service," rather than "cable television service." My reason is that "television service" is defined in s. 100.195 (1) (h), but is not otherwise used in s. 100.195. Therefore, I fixed the mistake in s. 100.195 (1) (c) 2. ***Is that okay?*** Also, as requested, I defined "television service" to include video service as defined in the bill.

25. ***Privacy (s. 134.43):*** I have not received further instructions on how you want to treat s. 134.43. Therefore, I did not make any changes. ***Do you wish to make changes to s. 134.43?***

26. ***Chapter 196:*** I am uncertain as to how you want to deal with ch. 196. I changed the term "cable television service" to "cable service" as defined under federal law. See

my repeal and recreation of s. 196.01 (1p) and related changes in ss. 196.01 (1g) and (9m) and 196.203 (3) (b) (intro.) and 2., (c), (d), and (e) 1. (intro.).

27. *Connection of facilities (s. 196.04 (4)):* I replaced “cable operator” with “video service provider,” which is defined in s. 196.01 (12r) to mean both “interim cable operators” and “video service providers” as defined in the bill.

28. *Cable television telecommunications service providers (s. 196.203):* I did not affect the definition of “cable television telecommunications service provider” in s. 196.01 (1r), which is used in s. 196.01 (1d) (a). In addition, the following statutes mistakenly refer to a “cable telecommunications service provider,” and I corrected them to refer instead to a “cable television telecommunications service provider”: ss. 20.395 (3) (jh), 25.40 (1) (a) 4m., and 196.203 (1m). In addition, I did not affect the use of the term “cable television system” in ss. 196.01 (1r) and 196.203 (1m) (which are the only two uses of that term in ch. 196). However, as noted above, I changed references in s. 196.203 from “cable television service” to “cable service.”

29. *Competing public utilities, etc. (s. 196.50):* In s. 196.50 (1) (b) 2. e., I replaced “cable television service” with “video service,” which is defined in s. 196.01 (12g) to have the meaning as defined in the bill.

30. *Assessments (s. 196.85):* In s. 196.85 (1m) (b), I replaced “cable operator” with “video service provider,” which is defined in s. 196.01 (12r) to mean both “interim cable operators” and “video service providers” as defined in the bill.

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